IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10503 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

S K PARMAR

Versus

DIRECTOR OF EMPLOYMENT AND TRAINING

Appearance:

1. Special Civil Application No. 10503 of 2003

MR AS SUPEHIA for Petitioner No. 1

MR. K.P. RAWAL, LD. AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 07/07/2004

ORAL JUDGEMENT

1.1 The petitioner has approached this Court under

Article 227 of the Constitution of India challenging the judgment & order of Gujarat Civil Services Tribunal dated 5th February 2003 passed in Appeal No. 377 of 2001, whereby the Tribunal has confirmed the order of the Director, Employment & Training dated 12th July, 2001 removing the petitioner from the service with a clarification that he is entitled for Government service in future.

2.1 The short facts of the case are that the petitioner was serving as Driver in the Department of Employment And Training - the Respondent herein. The case of the petitioner is that he had gone to his native from Ahmedabad after attending a seminar on 30th August, 1995, by taking the Government vehicle, without the prior permission of any of the authorised persons, and he used the said vehicle for two days. On 3rd October, 1995 the petitioner met with an accident at village Detroj with an auto-rickshaw and had caused damage to the tune of Rs.5,000-00 to the said auto-rickshaw and had also killed two persons in the said accident because of the negligent driving of the petitioner. The FIR was lodged before the Detroj Police Station being C.R. No: 86/1995 under sections 279, 337, 338, 304-A and 427 of Indian Penal Code and under section 177 and 118 of the Motor Vehicles Act.

2.2 The respondent authority issued a show cause notice dated 11th/ 12th June, 1996 wherein the petitioner was called upon to show cause as to why penalty under Rule- 6 of the Gujarat Civil Services (Discipline & Appeal) Rules 1971 should not be imposed. Along with the show cause notice charge sheet was also issued to the petitioner. After holding departmental inquiry, second show cause notice was issued to the petitioner on 15th September, 1998 calling upon the petitioner why penalty under Rule-6 (major penalty) should not be imposed on the petitioner.

2.3 After considering the inquiry report and explanation of the petitioner, respondent removed the petitioner from the service by order dated 12th July, 2001, which is at Annexure-D to the petition. Feeling aggrieve by the order of removal from service, petitioner filed an appeal before the Gujarat Civil services Tribunal, wherein after considering the records of the departmental proceedings, the Tribunal has also dismissed the appeal of the petitioner. On being aggrieved by the said decision of the Gujarat Civil Services Tribunal, petitioner has approached this Court by way of present petition.

3.1 Mr. K.P. Rawal, learned AGP appearing for the respondent has submitted that the order passed by the respondent authority is quite just & proper and no interference is called for by this Honourable Court under Article 227 of the Constitution of India in as much as looking to the misuse of petitioner's position as driver in the department and without prior approval taking away of the vehicle for personal use, and involvement of the petitioner in a serious accident in which two persons have lost their lives and also caused damages to the auto-rickshaw etc. the allegations are proved in the departmental inquiry, and therefore; no interference is called for under Article 227 of the Constitution of India and no discretionary relief may be granted to the petitioner.

4.1 Mr. Supehia, learned advocate for the petitioner has submitted that the penalty imposed on the petitioner is very harsh and is contrary to the well settled principles of law in as much as in the show cause notice petitioner was called upon to show cause why he should not be imposed penalty under sub rules (4) to (8) of Rule-6 of the Gujarat Civil Service (Discipline & Appeal) Rules, 1971 and therefore, minimum penalty should have been imposed by the respondent authority in view of the law laid down by this Court in case of DAHYABHAI DEVJIBHAI VASAVA Vs. DY. DIST. DEV. OFFICER, BROACH, reported in (1979) 20 (2) G.L.R. pg. 678.

4.2 The second contention raised by Mr. Supehia for the petitioner is that the petitioner has been removed from the service when the criminal proceedings were pending before the competent court, and subsequently the petitioner has been exonerated by the competent Criminal Court on 20th April, 2003. Therefore, looking to the fact that the petitioner has already been exonerated by the competent Court, removal order of the petitioner is very harsh.

4.3 The third contention raised by Mr. Supehia is that the only allegation against the petitioner is that he has unauthorisedly taken the vehicle for his personal use, but even under the Rules the petitioner could have been allowed to take the vehicle for his personal use by the authority, and therefore, the penalty is disproportionate to the charges proved against the petitioner.

5.1 Mr. Rawal for the respondent has submitted that looking to the conduct of the petitioner the penalty

imposed by the respondent is just and proper and the order of the competent authority is upheld by the Tribunal in the appeal filed by the petitioner, and therefore, this Honourable Court may not exercise extra ordinary jurisdiction under Article 227 of the Constitution of India in favour of the petitioner.

6.1 Mr. Supehia for the petitioner has fairly stated that the first contention which he has raised was not raised before the Tribunal and since it is a law point, same can be raised before this Court, and further in view of the law laid down by this Court in DAHYABHAI DEVJIBHAI VASAVA (supra) the order of removal is required to be quashed and set aside as both the show cause notices which were issued by the respondent clearly indicate that why penalty under Rule-6 should not be imposed on the petitioner. It is pertinent to note that, in the case of Dahyabhai Devjibhai Vasava (supra) there was discrepancy in the two notices issued in the said case and therefore this Court has held in favour of the petitioner therein saying that, since there is discrepancy in the two notices issued, the notices were required to be quashed at the initial stage itself. However, in the present case there is no discrepancy in both the notices. The authority was very clear that penalty under Rule-6 was required to be imposed. The second notice was more specific and it is stated therein that why penalty under sub-rules (4) to (8) of the Rule-6 may not be imposed on the petitioner. In my view, therefore, the judgment relied on by the advocate is not helpful to the petitioner in any manner. The respondent Director was justified in removing the petitioner from the service looking to the fact that the petitioner has misused his position as driver in the department and taken away the Government vehicle for two days for his personal use and met with an accident in which two people have lost their lives.

6.2 The second contention of Mr. Supehia regarding pendency of the criminal proceeding and acquittal thereafter is to be considered in favour of the petitioner, it is to be noted that on plain reading of the order of the disciplinary authority, the authority has not considered the pendency of the criminal proceedings against the petitioner while passing the impugned order, but has proceeded on the basis of misuse of Government vehicle and opined that the defence of the petitioner of his father's illness for taking away the Government vehicle was an after thought and has not accepted the said defence of the petitioner dated 17th December 1998. In my view, the respondent was justified

in removing the petitioner even on the ground of misuse of Government vehicle without prior approval of the authority.

6.3 The third contention raised by Mr. Supehia is misconceived in as much as the Class-IV employees will never be allowed to take Government vehicles even with permission. Therefore, even if the Government servant has misused the Government vehicle with the permission of his superior, as per law, he is not entitled to use the Vehicle.

7.1 Therefore, in my view, no interference is called for under Article 227 of the Constitution of India, more particularly when the Tribunal has considered all the facts and evidence on record of the departmental inquiry held against the petitioner while deciding the appeal preferred by the petitioner, and then after reached a conclusion confirming the action of the respondent authority as legal and valid.

7.2 In the result, the petition deserves to be dismissed and accordingly same is dismissed. Rule discharged. However, I make no order as to costs.

Dt: 7-7-2004 (K.S. Jhaveri, J)

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